

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:4

PLR-126961-06

Date: DECEMBER 11, 2006

Re:

Legend:

| | |
|-----------|---|
| Donor | = |
| Spouse | = |
| Q | = |
| R | = |
| S | = |
| Trust | = |
| Trustees | = |
| Date 1 | = |
| Date 2 | = |
| Date 3 | = |
| \$x | = |
| Y | = |
| Residence | = |
| State | = |

Dear :

This is in response to your authorized representative's submission dated May 22, 2006, on your behalf, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations and section 2642(g) of the Internal Revenue Code to allocate Donor's and Spouse's GST exemption to Trust.

The facts and representations submitted are summarized as follows: On Date 1, Donor, a resident of State, established Trust, intended to qualify as a qualified personal

residence trust (QPRT) within the meaning of section 2702 of the Internal Revenue Code. On Date 2, Donor transferred Residence to Trust. Under the terms of Trust, Donor retained the exclusive use of Residence for a term of Y years. On expiration of the Y year term, the Trust corpus was to pass in equal shares to three separate trusts for the benefit of Donor and Spouse's three children, Q, R, and S and their respective issue. Donor and Spouse reported the transfer to Trust on timely filed gift tax returns on which each elected to treat the transfer as made one-half by each under section 2513. It is represented that neither Donor nor Spouse allocated GST exemption on the gift tax returns filed to report the transfer, because the transfer was subject to an estate tax inclusion period (ETIP) under section 2642(f).

Trust terminated on Date 3, on the expiration of the Y year term. Q, R, and S were living at that time, and are still living. It is represented that the value of Residence on Date 3 was \$x. Donor and Spouse failed to make any allocation of GST exemption to Trust on the close of the ETIP.

Donor and Spouse request the following rulings.

1. Each of Donor and Spouse is the transferor for GST tax purposes of 50% of Trust.
2. Donor and Spouse are granted an extension of time to allocate their respective GST exemptions to Trust, effective as of Date 3. If made, such allocations, each for an amount equal to 50% of the value of Residence, will result in Trust having an inclusion ratio of zero for GST tax purposes as of Date 3.

Ruling 1. Under section 2501, a tax, computed as provided in section 2502, is imposed each calendar year on the transfer of property by gift during such calendar year by any individual, resident or nonresident.

Section 2513(a)(1) provides that a gift made by one spouse to any person other than his spouse shall, for the purposes of chapter 12, be considered as made one-half by each spouse, but only if at the time of the gift each spouse is a citizen or resident of the United States. Section 2513(a)(2) provides that section 2513(a)(1) shall apply only if both spouses have signified their consent to the application of that section in the case of all such gifts made during the calendar year by either while married to each other.

Section 2601 imposes a tax on every generation-skipping transfer made by a "transferor" to a "skip person". Under section 2652(a)(1), a transferor is defined, in the case of an intervivos transfer subject to gift tax, as the donor of the property.

Under section 2652(a)(2), if, under section 2513, one-half of a gift is treated as made by an individual and one-half of the gift is treated as made by the spouse of such individual, the gift shall be so treated for GST tax purposes.

Section 26.2652-1(a)(4) of the Generation-skipping Transfer Tax regulations provides that in the case of a transfer with respect to which the donor's spouse makes an election under section 2513 to treat the gift as made one-half by each spouse, the electing spouse is treated as the transferor of one-half of the entire value of the property transferred by the donor, regardless of the interest the electing spouse is actually deemed to have transferred under section 2513. The donor is also treated as the transferor of one-half of the value of the entire property.

The facts submitted indicate that the gift of Residence to Trust was reported on timely filed federal gift tax returns for each of Donor and Spouse for Year 1. On their respective returns, Donor and Spouse each consented to have the gift treated as made one-half by each under section 2513. Accordingly, pursuant to section 26.2652-1(a)(4), Donor is treated as the transferor of one-half of the entire value of the property transferred by Donor, and Spouse is treated as the transferor of one-half of the entire value of the property.

Ruling 2. Section 2602 provides that the amount of the GST tax is determined by multiplying the taxable amount by the applicable rate. Section 2641(a) provides that the term "applicable rate" means with respect to any GST transfer, the product of the maximum federal estate tax rate and the inclusion ratio with respect to the transfer.

Under section 2642(a)(1), the inclusion ratio with respect to any property transferred in a generation-skipping transfer is generally defined as the excess of 1 over the "applicable fraction". The applicable fraction, as defined in section 2642(a)(2), is a fraction, the numerator of which is the amount of GST exemption under section 2631 allocated to the trust (or to property transferred in a direct skip), and the denominator is the value of the property transferred to the trust or involved in the direct skip. Generally, under section 2631(a) as in effect as of Date 3, for purposes of determining the inclusion ratio, every individual is allowed a GST exemption of \$1,000,000 (adjusted for inflation under section 2631(c)) that may be allocated by the individual (or his executor) to any property with respect to which the individual is the transferor. Section 2631(b) provides that any allocation under section 2631(a), once made, is irrevocable.

Under section 2642(b)(1), if the allocation is made on a timely filed gift tax return reporting the transfer, then the allocation is effective as of the date of the transfer and the denominator of the applicable fraction is the value of the property as determined for gift tax purposes.

Under section 2642(f), a different rule applies in the case of inter vivos transfers subject to an estate tax inclusion period (ETIP), defined as the period during which, should death occur, the value of the transfer would be includible in the gross estate of the transferor or the spouse of the transferor. Under section 2642(f)(1) and section 26.2632-1(c)(1)(ii), an allocation of GST exemption to such a transfer made at any time during the ETIP is irrevocable but will not be effective until the termination of the ETIP. If an allocation has not been made prior to the close of the ETIP, an allocation of

exemption is effective as of the close of the ETIP during the transferor's lifetime if made by the due date for filing the Form 709 for the calendar year in which the close of the ETIP occurs (timely ETIP return). Under section 2642(f)(2), in the case of an allocation made at the close of the ETIP, the value of such property shall be its value at the time of the close of the ETIP. An allocation of GST exemption made after the due date for a timely filed ETIP return will be effective as of the date of the allocation.

Under section 26.2632-1(c)(3), the ETIP terminates at such time as the property ceases to be subject to inclusion in the donor's gross estate (other than by reason of section 2035) or in the case of an individual who is a transferor solely by reason of an election under section 2513, the time at which no portion of the property would be includible in the gross estate of the individual's spouse.

If a gift is made that is subject to inclusion in the gross estate of the donor, and the donor and spouse make the election under section 2513, the transfer by the spouse of a 50% interest in the property as well as the transfer by the donor of a 50% interest in the property is subject to an ETIP. See section 26.2632-1(c)(5), Example 3.

Section 2642(g)(1)(A) provides that the Secretary shall by regulation prescribe such circumstances and procedures under which extensions of time will be granted to make an allocation of GST exemption described in section 2642(b)(1) or (2), and an election under section 2632(b)(3) or (c)(5). The regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of section 2642(g).

Section 2642(g)(1)(B) provides that in determining whether to grant relief under this paragraph, the Secretary shall take into account all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. For purposes of determining whether to grant relief under this paragraph, the time for making the allocation (or election) shall be treated as if not expressly prescribed by statute.

Under section 301.9100-1(c), the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in sections 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose due date is prescribed by a regulation (and not expressly provided by statute). Under section 301.9100-1(b), a regulatory election includes an election whose due date is prescribed by a notice published in the Internal Revenue Bulletin. Notice 2001-50, 2001-2 C.B.189, provides that taxpayers may seek an extension of time to make an allocation described in 2642(b)(1) or (b)(2)

or an election described in section 2632(b)(3) or (c)(5) under the provisions of section 301.9100-3.

In accordance with section 2642(g)(1)(B) and Notice 2001-50, taxpayers may seek an extension of time to make an allocation described in section 2642(b)(1) under the provisions of section 301.9100-3.

Requests for relief under section 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer has acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the government.

Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Based on the facts submitted and the representations made, we conclude that the requirements of section 301.9100-3 have been satisfied. Accordingly, Donor and Spouse are each granted an extension of time until 60 days after the date of this letter to make an allocation of their respective GST exemption with respect to Trust.

The allocations, once made, will be effective on Date 3. The inclusion ratio of Trust will be determined based on the value of Residence on Date 3 and the amount of GST exemption allocated by Donor and Spouse with respect to Residence. If Donor and Spouse each allocate an amount of GST exemption equal to 50 percent of the fair market value of Residence as of Date 3, then Trust will have a zero inclusion ratio as of Date 3. We express no opinion regarding the value of Residence on Date 3.

The allocations should be made on Forms 709 to be filed by Donor and Spouse, respectively. The Forms 709 are to be filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to each return. Additional copies are enclosed for this purpose.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as specifically ruled herein, we express or imply no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provisions of the Code.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

William P. O'Shea
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure (2)

Copy of Letter for section 6110 purposes

Copies of Letter to file with supplemental gift tax returns